



MIKE PENCE, *Governor*
JAMAL L. SMITH, *Executive Director*

ICRC No.: EMra12020945
[REDACTED]

[REDACTED],
Complainant,

v.

LOW T CENTER,
Respondent.

NOTICE OF FINDING

The Deputy Director of the Indiana Civil Rights Commission ("Commission"), pursuant to statutory authority and procedural regulations, hereby issues the following Notice of Finding with respect to the above-referenced case. Probable cause does exist to believe that an unlawful discriminatory practice occurred. 910 IAC 1-3-2(b).

On February 9, 2012, [REDACTED] ("Complainant") filed a complaint with the Commission against Low T Center, ("Respondent") alleging sex (pregnancy) discrimination in violation of [REDACTED] and the Indiana Civil Rights Law (IC 22-9, et seq.) Accordingly, the Commission has jurisdiction over the parties and the subject matter.

An investigation has been completed. Both parties have submitted evidence. Based on the final investigative report and a full review of the relevant files and records, the Deputy Director now finds the following:

The issue presented to the Commission is whether Complainant was terminated due to her race or pregnancy. In order to prevail, Complainant must show that: (1) she is a member of a protected class; (2) she suffered an adverse employment action; (3) she was meeting Respondent's legitimate business expectations and; (4) a nexus exists between the adverse employment action and Complainant's pregnancy, or whether similarly-situated employees of a different race were afforded more favorable treatment.

It is evident that Complainant falls within a protected class by virtue of her pregnancy and race and it is undisputed that she suffered an adverse action when she was terminated on November 30, 2011. The only remaining questions are whether Complainant was meeting Respondent's expectations or, if not, whether there is a causal connection between the termination and her pregnancy, or if similarly-situated employees of a different race were treated more favorably.

The investigative record indicates that Respondent asserts it terminated Complainant for poor work performance, inadequate client care, the use of Facebook and other social media sites during work hours, using profanity in the workplace, creating a hostile work environment for employees, and instigating numerous interpersonal conflicts which she was unwilling to resolve. While the available evidence does not indicate any disparate treatment based upon Complainant's race, the evidence



and witness testimony suggests that Respondent's reason for her termination lacks credibility and may indicate pretext for unlawful discrimination based on her pregnancy. The evidence shows that after Complainant informed Respondent of her pregnancy, she also inquired about her future maternity leave on more than one occasion and was terminated shortly after making the inquiries. Respondent indicated Complainant was terminated for continuing to post comments on Facebook after she had received a previous verbal warning concerning the same issue. Further, Complainant asserted that Respondent informed her that she was terminated because she could not get along with her co-workers; however, Complainant contends that she did not experience any issues after the last verbal warning. Respondent failed to submit any evidence to substantiate that Complainant was reprimanded or disciplined a second time regarding Facebook after the first verbal warning and was unable to verify the postings on the site because they had been deleted. While there is no evidence to suggest Respondent discriminated against the Complainant on the basis of race, it appears that Respondent's proffered non-discriminatory justifications are a mere pretext for discrimination on the basis of sex/pregnancy. Based upon the above findings, probable cause does exist to believe that an unlawful discriminatory practice has occurred.

Based upon the above findings, probable cause exists to believe that an unlawful discriminatory practice occurred. A public hearing is necessary to determine whether a violation of the Indiana Civil Rights Law occurred as alleged in the above-referenced case. IC § 22-9-1-18, 910 IAC 1-3-5 The parties may elect to have these claims heard in the circuit or superior court in the county in which the alleged discriminatory act occurred. However, both parties must agree to such an election, or the Indiana Civil Rights Commission will hear this matter. IC § 22-9-1-16, 910 IAC 1-3-6.

1/30/2012

Date

Akia Haynes

Akia A. Haynes, Esq.

Deputy Director

Indiana Civil Rights Commission